

Assembly Bill No. 690

CHAPTER 110

An act to amend Sections 488.455 and 700.140 of the Code of Civil Procedure, relating to garnishment.

[Approved by Governor July 23, 2003. Filed with
Secretary of State July 24, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 690, Pacheco. Garnishment: execution and attachment liens.

Existing law provides that, in order to levy an execution lien or attachment lien upon a deposit account, the levying officer shall personally serve a copy of the writ and a notice of levy on the financial institution with which the deposit account is maintained.

This bill would provide for an alternative method of attachment by the levying officer, by personal service of the writ and notice of attachment on a centralized location within the county designated by the financial institution. The bill would also provide that if the writ is received at the designated central location, it shall apply to all deposit accounts held by the financial institution regardless of the location of that property.

The people of the State of California do enact as follows:

SECTION 1. Section 488.455 of the Code of Civil Procedure is amended to read:

488.455. (a) Subject to Section 488.465, to attach a deposit account, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the financial institution with which the deposit account is maintained, or shall personally serve the writ of attachment and notice of attachment on a centralized location within the county designated by the financial institution. If the writ of attachment is received at the designated central location, it shall apply to all deposit accounts held by the financial institution regardless of the location of that property. The attachment lien reaches only amounts in the deposit account at the time of service on the financial institution, including any item in the deposit account that is in the process of being collected, unless the item is returned unpaid to the financial institution. This section does not require a financial institution to designate a central location for personal service of the writ and notice of attachment.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of attachment and a notice of attachment on any third person in whose name the deposit account stands.

(c) During the time the attachment lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount that is less than the amount attached. For the purposes of this subdivision, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(d) During the time the attachment lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the attachment.

(2) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account if the nonpayment is pursuant to the requirements of subdivision (c).

(3) Refusal to pay a withdrawal from the deposit account if the refusal is pursuant to the requirements of subdivision (c).

(e) When the amount attached pursuant to this section is paid to the levying officer, the attachment lien on the attached deposit account terminates.

(f) For the purposes of this section, neither of the following is a third person in whose name the deposit account stands:

(1) A person who is only a person named as the beneficiary of a Totten trust account.

(2) A person who is only a payee designated in a pay-on-death provision in an account pursuant to Section 18318.5 of the Financial Code or Section 5140 of the Probate Code, or other similar provision.

(g) When a deposit account has been attached, as an alternative to paying the amount of the deposit account that is attached to the levying officer as required by Section 488.600, the financial institution may continue to hold the deposit account until the deposit account is levied upon after judgment in the action or is earlier released, the deposit account to be held in one of the following manners:

(1) If the entire deposit account is attached, the financial institution may hold the deposit account on the terms applicable before the attachment, subject to the requirements of subdivision (c).

(2) If less than the entire deposit account is attached:

(A) With the consent of the defendant, and any third person in whose name the deposit account stands, the financial institution may hold in the deposit account on the same terms an amount larger than the attached



amount as necessary to avoid a penalty or a reduction of the rate of interest.

(B) If the defendant, and any third person in whose name the deposit account stands, do not consent as provided in subparagraph (A), the financial institution may hold the attached amount on the same terms affecting the deposit account before the attachment, subject to the requirements of subdivision (c).

(3) The financial institution may hold the attached deposit account in any other manner agreed upon by the plaintiff, the defendant, and any third person in whose name the deposit account stands.

(h) Subdivision (g) does not prevent a financial institution that is holding an attached deposit account as provided in subdivision (g) from paying the attached amount to the levying officer before the time the financial institution otherwise is required to pay the amount under subdivision (g).

SEC. 2. Section 700.140 of the Code of Civil Procedure is amended to read:

700.140. (a) Subject to Section 700.160, to levy upon a deposit account, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the deposit account is maintained, or shall personally serve the writ of execution and notice of levy to a centralized location within the county designated by the financial institution. If the writ of execution is received at the designated central location, it shall apply to all deposit accounts held by the financial institution regardless of the location of that property. The execution lien reaches only amounts in the deposit account at the time of service on the financial institution, including any item in the deposit account that is in the process of being collected, unless the item is returned unpaid to the financial institution. This section does not require a financial institution to designate a central location for personal service of the writ of execution and notice of levy.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name the deposit account stands. Service shall be made personally or by mail.

(c) During the time the execution lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount that is less than the amount levied upon. For the purposes of this subdivision, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.



(d) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

- (1) Performance of the duties of a garnishee under the levy.
- (2) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account if the nonpayment is pursuant to the requirements of subdivision (c).
- (3) Refusal to pay a withdrawal from the deposit account if the refusal is pursuant to the requirements of subdivision (c).

(e) When the amount levied upon pursuant to this section is paid to the levying officer, the execution lien on the deposit account levied upon terminates.

(f) For the purposes of this section, neither of the following is a third person in whose name the deposit account stands:

- (1) A person who is only a person named as the beneficiary of a Totten trust account.
- (2) A person who is only a payee designated in a pay-on-death provision in an account pursuant to Section 18318.5 of the Financial Code or Section 5140 of the Probate Code, or other similar provision.

